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September 28, 2016

The Honorable Nathanael Cousins
Magistrate Judge
Northern District of California
San Jose Courthouse, Courtroom 7
280 South 1st Street
San Jose, CA 95113

Re: **U.S. v. Zhang, 5:15-cr-00106-EJD-2**
Statement of Recent Decision

Dear Judge Cousins,

Pursuant to Civil Local Rule 7-3(d)(2), Defendant submits this Statement of Recent Decision. *United States v. Soto-Zuniga*, 2016 WL 4932319 (9th Cir. Sept. 16, 2016), is relevant to the two subpoenas duces tecum currently under consideration by the Court in the above-referenced action. A copy of that opinion is enclosed for the Court's review.

Soto-Zuniga may have altered the rule set forth in *United States v. Reyes*, 239 F.R.D. 591 (2006), that the proponent of a subpoena pursuant to Rule 17(c) must show that the evidence sought is admissible. *Soto-Zuniga*, which addressed discovery under Rule 16, held that admissibility was not a requirement; a defendant need only show that the information sought is material to preparing his defense. *Soto-Zuniga*, 2016 WL 4932319, at *8 ("The test is not whether the discovery is admissible at trial, but whether the discovery may assist Soto-Zuniga in formulating a defense, including leading to admissible evidence.").

We direct the Court's attention to this binding Ninth Circuit authority out of an abundance of caution.

Very truly yours,

NOLAN BARTON BRADFORD & OLMOS, LLP


Thomas J. Nolan

TN/sw

